TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1963

No. [redacted] 13

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 1625, AFL-CIO, ET AL., PETITIONERS,

vs.

ALBERTA SCHERMERHORN, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

PETITION FOR CERTIORARI FILED AUGUST 26, 1963
CERTIORARI GRANTED NOVEMBER 12, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 368

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 1625, AFL-CIO, ET AL., PETITIONERS,

vs.

ALBERTA SCHERMERHORN, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA

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[fol. 1]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY

No. 60C11562

ALBERTA SCHERMERHORN, LOIS DEVITA, JOYCE E. THURO, and LARRY STARK, individually, as well as in a representative capacity on behalf of each and all other persons of a multitudinous class to which they belong and which is similarly situated, Plaintiffs,

vs.

LOCAL 1625 OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO; WILLIAM TRAVIS, President of Local 1625 of the Retail Clerks International Association, AFL-CIO; and FOOD FAIR STORES, INC., SOUTHERN DIVISION, a Pennsylvania Corporation, registered to do business in the State of Florida, Defendants.

COMPLAINT FOR INJUNCTION AND OTHER RELIEF

Come Now the Plaintiffs, by and through their undersigned attorney, and say:

1. The plaintiffs, Alberta Schermerhorn, Lois Devita, Joyce E. Thuro and Larry Stark, are each citizens and residents of Broward County, State of Florida. All the plaintiffs, with the exception of Larry Stark, are over the age of twenty-one (21) years. All plaintiffs are regular, permanent employees of the defendant Employer, Food Fair Stores, Inc., Southern Division, engaged in either full or part time employment at the Food Fair store, 1510 S. Federal Highway, Hollywood, Florida. Plaintiff Alberta Schermerhorn has been employed by the Defendant Employer for over seven (7) years.

2. This action is brought by the plaintiffs, individually, as well as in a representative capacity on behalf of each

and all other persons of a multitudinous class to which they belong and which is similarly situated. Said class consists of more than nineteen hundred (1900) fellow employees of the defendant and its subsidiaries. The number of persons who have a common interest in the questions involved in this action is so great as to make it impractical, [fol. 2] difficult or impossible to bring them all before the Court in a joint Complaint. The named plaintiffs, having the same interests as each member of the class, fairly represent the class in the presentation of this action.

3. The plaintiffs are advised and believe, and therefore allege, that the defendant employer is a corporation with its principal office and place of business in Dade County, Florida, and operates its business as a super-market chain store operation on an extensive basis within this state. That in order to perform the normal operations of its business, the defendant employer employs in this State a large number of persons, including each of the plaintiffs, and others similarly situated whom the plaintiffs fairly represent. Upon information and belief, the plaintiffs allege that the defendant employer employs at its various supermarkets and places of business in this state others, classifications of workers such as dairy men, stockroom help, produce help, grocery and front-end employees.

4. On information and belief, the plaintiffs allege that the defendant, William Travis, is the President of the defendant Union, Local 1625 of the Retail Clerks International Association, AFL-CIO. That the defendant Union includes in its membership, cashiers, bag-boys, stockroom help, produce help, grocery and front-end employees, and others, many of whom are employees of the defendant employer.

5. The defendant Union has entered into a written agreement with the defendant employer wherein the defendants reached an agreement on the terms of a collective bargaining contract dealing with wages, hours and working conditions. This contract, the entire terms of which are unknown to the plaintiffs, will run until April 15, 1963. The defendant employer and defendant Union have posted a Notice

at the plaintiffs' places of employment pertaining to the agreement reading as follows: (See Exhibit A)

> "There is a clause in the agreement, however, which both Management and the Union desire to call specifically to your attention. Article 19 of the agreement provides for the establishment of an Agency Shop. Because many of you may not be too familiar with the meaning and purpose of an Agency Shop, a few [fol. 3] words of explanation may be in order.
>
> The Agency Shop recognizes that union membership in the State of Florida is a voluntary act of the employee. On the other hand, under an Agency Shop Agreement, those Employees who do not become members of the Union nevertheless are required to pay the necessary service fees to the Local Union in order to aid the Union in meeting its authorized expenses as the exclusive bargaining agent.
>
> Therefore, the Company and the Union have agreed that *even though you may not have joined the Union, you are obligated, under the provisions of the Agency Shop, to pay an initial service fee which is the equal of the initiation fee for Union members and a monthly service fee which is the equal of the monthly dues for those who voluntarily become Union members.* Note: An Employee who pays the regular initial fee and regular monthly service fee but does not voluntarily join the Union, does not participate in the internal union affairs even though said Employee receives equal treatment under the contract.
>
> The Company and the Union have agreed upon the Agency Shop Provision because we believe it is democratic, just and equitable for all the parties concerned." (Emphasis Added)

6. That the Agency Shop Clause, otherwise known as Article 19 of the Agreement entered into by and between the defendant Employer and the defendant Union, reads as follows: (See Exhibit B)

> "Employees shall have the right to voluntarily join or refrain from joining the Union. *Employees who*

choose not to join the Union, however, and who are covered by the terms of this contract, *shall be required to pay as a condition of employment*, an initial service fee and monthly service fees to the Union for the purpose of aiding the Union in defraying costs in connection with its legal obligations and responsibilities as the exclusive bargaining agent of the employees in the appropriate bargaining unit. The aforesaid fees shall be payable on or before the first day of each month, and such sums shall in no case exceed the initiation fees and the membership dues paid by those who voluntarily choose to join the Union. Other than the payment of these service fees, those employees who do not choose to join the Union shall be under no further financial obligations or requirements of any kind to the Union. It shall also be a condition of employment that all employees covered by this Agreement shall on the 30th day following the beginning of such employment or the effective date of this agreement, whichever is later, pay established initial and monthly service fees as shown above." (Emphasis Added)

7. Each of the plaintiffs, and all other employees of the defendant employer similarly situated and whom they represent in this action, have the right to work free from restraints and coercion which would be imposed on them in the event the defendants seek to enforce the Agency Shop [fol. 4] provisions of the Union-Employer agreement. The Constitution of the State of Florida, Declaration of Rights, #12, provides that:

> "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization; * * * "

The Legislature of the State of Florida, Florida Statute 447.01, has declared that *the right to work is the right to live;* and the working man, unionist or non-unionist, must be protected.

8. That the plaintiffs are not and do not want to be members of the Union. The plaintiffs do not want to participate in any Agency Shop relationship and they do not want to pay the defendant Union any dues or service fees or initiation fees.

9. That some of the plaintiffs have heretofore paid to the Union, *under protest,* an "initial service fee" and will be compelled, under protest, by the Union, to pay a monthly service fee of $2.00 to $4.00 a month.

10. That the Agency Shop Clause is being enforced by the defendant Union, the defendant President of the Union, and the Union's representatives and agents. The plaintiffs have been orally advised within the past two (2) weeks that if the plaintiffs do not join the Union or pay the initial service fees and monthly service fees, that they will be discharged by the defendant Employer. *The plaintiffs are, in effect, being blackmailed by the defendant Union to either pay money or lose their jobs.* The Agency Shop Provision is undemocratic, unjust and in violation of the established and declared public policy of the State of Florida.

11. That the enforcing and carrying out of the Union-Agency Shop Provision, as aforesaid, between the defendants, making the payment of sums of money to a Union, a condition of employment, is unlawful and illegal, and it would cause the plaintiffs to suffer serious and irreparable damage and injury, for which there could be no adequate remedy at law and the only remedy which would afford them adequate and proper relief is the injunctive process of this court.

Wherefore the plaintiffs pray:

1. That this Court take jurisdiction of the parties and [fol. 5] the subject matter of this cause.

2. That until the final hearing of this cause, a temporary restraining order be issued restraining the defendants and each of them, their officers, agents, servants, employees and attorneys, and those in active concert or participation with them:

(a) From carrying out or enforcing any Agency Shop or similar provision, or any contract or agreement, calling for a Union Shop, Agency Shop, or similar arrangement, whereby the payment of an initial service fee and/or monthly service fee or charge to a Union, is made a condition of continued employment or of employment.

(b) From inducing, encouraging, aiding, ordering, or causing employees of the defendant Employer to discharge the employee plaintiffs as a means of forcing the defendant Employer to enforce any such agreement or provision.

(c) From ordering a strike or lockout of the employees as a means of enforcing any such agreement or provision.

(d) From aiding or procuring or causing to be done any act which they or any of them may be enjoined or restrained from doing.

3. That on a final hearing of this action, the Court enter a Final Decree finding and declaring that the aforesaid Agency Shop Provision or agreement as agreed upon between the defendant Union and the defendant Employer is in violation of contractual rights vested in the plaintiffs under their oral contracts of employment with the defendant employer, and is null and void and unenforceable and restraining and enjoining the defendants and each and every one of them, their agents, servants, employees and representatives, from in any manner, directly or indirectly, violating the Right-to-Work Constitutional and Statutory rights of the plaintiffs, by denying or abridging employment at Food Fair to any of the plaintiffs, or the class, or group similarly situated, on account of their membership or non-membership in any labor union, organization or association; and more specifically, from carrying out a contract, agreement or understanding, express or implied, whereby the defendant Employer would maintain a Union [fol. 6] and/or Agency Shop and from taking any action, concerted or otherwise, either directly or indirectly, to coerce, compel, force, persuade, induce, intimidate, or encourage the defendant Employer to discharge the plaintiffs.

4. That on a final hearing of this action, the Court find and determine that the defendant Union is not entitled to receive and should not have received any initial service fees or monthly service fees from plaintiffs or other non-Union employees of the defendant Employer; that the defendant Union and the defendant President of the local Union should account for all the monies so received by them, and return all the monies so received to the plaintiffs and the non-Union member employees of the defendant Employer.

5. That the Court grant such other and further relief as the plaintiffs may be entitled to and that upon a final hearing said injunction may be made permanent, and the plaintiffs may have at that time such other and further relief as they may be entitled to, including but not limited to damages, attorney's fees, and court costs.

Bernard B. Weksler, Attorney for Plaintiffs, 509 Industrial National Bank Building, Miami, Florida.

Alberta Schermerhorn, Lois Devita, Joyce E. Thuro, Larry Stark.

Duly sworn to by Alberta Schermerhorn, jurat omitted in printing.

[fol. 7]

EXHIBIT "A" TO COMPLAINT

IMPORTANT NOTICE TO EMPLOYEES

(AGENCY SHOP PROVISION)

Local 1625 of the Retail Clerks International Association, AFL-CIO, your sole bargaining agent, and Management, have reached agreement on the terms of a collective bargaining contract dealing with wages, hours and working conditions. This contract, which was duly ratified, will run until April 15, 1963. We believe the contract is fair to the Employees and Management and will result in a harmonious and stable relationship. Both management and

the Union sincerely hope that you will take time out to read the contract and acquaint yourselves personally with the excellent benefits and details.

There is a clause in the agreement, however, which both Management and the Union desire to call specifically to your attention. Article 19 of the agreement provides for the establishment of an Agency Shop. Because many of you may not be too familiar with the meaning and purpose of an Agency Shop, a few words of explanation may be in order.

The Agency Shop recognizes that union membership in the State of Florida is a voluntary act of the employee. On the other hand, under an Agency Shop Agreement, those Employees who do not become members of the Union nevertheless are required to pay the necessary service fees to the Local Union in order to aid the Union in meeting its authorized expenses as the exclusive bargaining agent.

Therefore, the Company and the Union have agreed that even though you may not have joined the Union, you are obligated, under the provisions of the Agency Shop, to pay an initial service fee which is the equal of the initiation fee for Union members and a monthly service fee which is the equal of the monthly dues for those who voluntarily become Union members. Note: An Employee who pays the regular initial fee and regular monthly service fee but does not voluntarily join the Union, does not participate in the internal union affairs even though said Employee receives equal treatment under the contract.

The Company and the Union have agreed upon the Agency Shop Provision because we believe it is democratic, just and equitable for all the parties concerned.

/s/ HAROLD FRIEDLAND
The Management

/s/ FRED J. KHOURY
The Union

[fol. 8]

EXHIBIT "B" TO COMPLAINT

AGENCY SHOP CLAUSE

"Employees shall have the right to voluntarily join or refrain from joining the Union. Employees who choose not to join the Union, however, and who are covered by the terms of this contract, shall be required to pay as a condition of employment, an initial service fee and monthly service fees to the Union for the purpose of aiding the Union in defraying costs in connection with its legal obligations and responsibilities as the exclusive bargaining agent of the employees in the appropriate bargaining unit. The aforesaid fees shall be payable on or before the first day of each month, and such sums shall in no case exceed the initiation fees and the membership dues paid by those who voluntarily choose to join the Union. Other than the payment of these service fees, those employees who do not choose to join the Union shall be under no further financial obligations or requirements of any kind to the Union." It shall also be a condition of employment that all employees covered by this Agreement shall on the 30th day following the beginning of such employment or the effective date of this agreement, whichever is later, pay established initial and monthly service fees as shown above.

[fol. 9]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY

[Title omitted]

MOTION TO DISMISS

Come Now the Defendants, Local 1625 of the Retail Clerks International Association, AFL-CIO, and William Travis, President thereof, by their undersigned counsel and move the court to dismiss the Complaint herein upon the following grounds:

1. This court lacks jurisdiction of the subject matter of the cause for the following reasons:

(a) The Complaint on its face shows that the contract does not violate Section 12 of the Declaration of Rights of the Florida Constitution or any of the statutes of Florida and therefore this court has no further jurisdiction in the cause, the Labor-Management Relations Act of 1947, as amended, having preempted the field of labor relations.

(b) The exclusive jurisdiction to determine whether or not the Agency Shop contract referred to in the Complaint violates Section 12 of the Declaration of Rights of the Florida Constitution or statutes of Florida, lies with the National Labor Relations Board since such a violation would constitute a violation of the Labor-Management Relations Act of 1947, as amended.

[fol. 10] 2. The Complaint fails to state a cause of action for the following reasons:

(a) The Complaint on its face shows that the named Plaintiffs do not constitute a class.

(b) The Complaint on its face shows that the contract complained of does not require membership in a Union and therefore does not violate Section 12 of the Declaration of Rights of the Florida Constitution or any of the statutes of Florida.

(c) The Complaint on its face fails to allege any ground of equitable relief and fails to allege facts showing irreparable damage to the Plaintiffs.

Claude Pepper Law Offices, By Claude Pepper, Attorneys for above Defendants.

Of Counsel: S. G. Lippman, Kaplan, Ser, and Abrams.

Certificate of Service (omitted in printing).

[fol. 11]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY

No. 60C 11562

[Title omitted]

RESPONSE TO APPLICATION FOR TEMPORARY INJUNCTION

Come now the defendants, Local 1625 of the Retail Clerks International Association, AFL-CIO, and William Travis, by and through their undersigned counsel, and in opposition to the Application for Temporary Injunction state the following:

1. The application for temporary injunction should be denied based on matters set forth in Motion to Dismiss filed this day with this Court and for the following additional reasons:

a. Serious question exists as to the Court's jurisdiction of the subject matter and, as plainly appears on the face of the agency shop provision of the contract, does not in any respect violate Sec. 12 of the Florida Constitution.

b. Plaintiffs will not suffer any irreparable injury pending the final adjudication by this Court. All that is involved is the payment of nominal sums of money not exceeding $3.50 per month for each plaintiff.

c. Plaintiffs do not in fact represent any class since in excess of 1500 employees have voluntarily become members of the Union and have approved the contract. Plaintiffs' depositions show that they are only authorized to speak on behalf of themselves.

[fol. 12] d. A temporary injunction will have a serious effect on harmonious labor relations presently existing between management and the Union and its denial, however, will have no consequential effect.

e. Plaintiffs in seeking a temporary injunction seek to upset the status quo, rather than to maintain it, since they seek to enjoin the operation of an existing contract.

f. Similar agency shop provisions are found in numerous agreements throughout the State of Florida and in the Greater Miami area. An adverse decision would, therefore, affect numerous employers and thousands of employees and upset stable labor relations involved.

g. The instant matter represents a case of first impression in this state and requires full and mature consideration by this Court, which can only be obtained after a final hearing. Courts of other states which have considered the matter have determined that the agency shop does not violate "right to work" enactments similar to Sec. 12, Florida Constitution.

h. The agency shop provision involved herein is an integral part of the contract and any impairment or interference with its operation could have the effect of nullifying the entire agreement and throwing labor relations into a state of confusion and uncertainty.

i. Plaintiffs in seeking a temporary injunction are requesting the same type of relief to which they would be entitled only after a full hearing should they prevail.

For the foregoing reasons and others which may be presented to the Court, it is respectfully urged that plaintiffs' application for a temporary injunction should be denied.

Claude Pepper Law Offices, Attorneys for Local 1625, R.C.I.A., AFL-CIO and William Travis, 1701 Meridian Avenue, Miami Beach 39, Florida, JE 2-4853, By Claude Pepper.

Of counsel: S. G. Lippman, Kaplan, Ser & Abrams.

[fol. 13] Certificate of Service. (omitted in printing).

[fol. 14]

Agreement Between
the
R. C. I. A. Local # 1625
and
Food Fair Stores, Inc.
and
Frederich's Markets

MIAMI
DADE COUNTY
FLORIDA.

MCM 56

This Agreement made and entered into this 11th day of July, 1960, by and between Food Fair Stores, Inc. of Miami and Frederich's Markets, hereinafter referred to as the Employer, and the Retail Clerks Union, Local No. 1625, chartered by Retail Clerks International Association, AFL-CIO, hereinafter referred to as the Union, and any renewal or extension thereof, shall be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

Article 1—Intent and Purpose

It is the intent and purpose of the parties hereto that this Agreement shall promote and improve the industrial relationship between the Employer and the Union and so set forth herein rates of pay, hours of work, and working conditions to be observed between the parties.

Article 2—Coverage

The Employer hereby recognizes the Union as the sole and exclusive bargaining agent for a unit consisting of all employees in the Employer's present and future retail food stores located in the counties of Dade, Broward, Monroe, St. Lucie and Palm Beach, State of Florida, with respect to rates of pay, wages, hours, and all other conditions of employment EXCEPT employees working in the meat department of the Employer's retail stores, Store Managers, and Assistant Store Managers.

Article 3—Union Security Provision

If, during the life of this Agreement or any renewal or extension thereof, the laws of the State of Florida are changed or amended to make Union-Shop Agreements valid, or should minimum wage and hour laws be changed to cover employees in this collective bargaining Agreement, such an Agreement shall become effective immediately and become a part of this Agreement or any renewal or extension thereof.

Article 4—Management

The management of the business and the direction of the employees, including the right to plan, direct, and control store operations, hire, suspend or discharge for just cause, transfer or relieve employees from duty because of lack of work or for other legitimate reasons, the right to introduce new or improved methods or other facilities and the right to establish and maintain reasonable rules and regulations covering the operation of the stores, a violation of which shall be among the causes for discharge, are vested in the Employer, provided that this right shall not be used for the purpose of discrimination against any employee.

Article 5—Non-Discrimination

The Employer agrees it will not discriminate against any employee because of union membership, or because of any union activity.

Article 6

Grievance and Arbitration Procedure

SECTION 1. The Employer and the Union shall make a sincere effort to settle promptly any differences, disputes or complaints arising over the interpretation or application of the contents of this Agreement through the following steps:

STEP ONE: By conference between the aggrieved employee, the Steward, and the store manager within five (5) days after the happening of the event causing the grievance. If the grievance is not settled within three (3) days, it shall be processed in Step Two.

STEP TWO: By conference between the Steward and/or Business Agent with the Store Manager and District Supervisor. If the grievance is not settled within three (3) days, it shall be processed in Step Three.

STEP THREE: The Union shall immediately submit in writing all pertinent facts pertaining to the grievance to the Personnel Manager, and within three (3) days the conference shall be held between the representatives of the Union and the Personnel Manager and/or a representative of the Employer. If the grievance is not settled within five (5) days, it shall be referred to Arbitration.

SECTION 2. The Union and the Employer each shall appoint a representative to meet in an effort to settle the grievance.

If the representative of the Union and the representative of the Employer fail to settle satisfactorily the complaint within forty-eight (48) hours, those two persons shall request the Federal Mediation and Conciliation Service to provide a panel of persons from which an Arbitrator shall be selected by alternative striking by the two representatives. This Arbitrator so selected shall constitute the Board of Arbitration, and his decision shall be binding on both parties. The expense incurred in the Arbitration proceedings such as hearing room, stenographer, transcript for each party and the Arbitrator's fees shall be divided equally between the Union and the Employer.

SECTION 3. No grievance shall be considered unless the procedure outlined above is followed.

SECTION 4. Upon request, the store manager will grant to any accredited union representative the right to communicate with the employees of the store.

SECTION 5. The Employer shall have the right to call a conference with the Steward or representative of the Union for the purpose of discussing grievances, criticisms or other problems.

Article 7

Discharge - Demotion - Promotion

SECTION 1. The power of discharge and discipline for just cause, to promote and

demote, lies with the Employer. It is agreed that this power shall be exercised with justice with regard to the right of the employees and that this power will not be used to discriminate against any employee.

SECTION 2. The power to discharge and discipline for just cause, to promote and demote, shall be subject to the grievance procedure. If such grievance is decided in favor of the employee, he shall be entitled to reinstatement and if the Arbitrator decides that the employee is entitled to pay for lost time, such pay will not exceed the straight time pay for the basic workweek.

SECTION 3. The Employer will give the Union notice of all discharges and layoffs within one (1) week of the employee's discharge or layoff. Notices shall be mailed to the Union headquarters.

Article 8—Stewards

SECTION 1. It is understood that the Stewards of the Union, at all times shall be regular full-time employees, and the Union shall furnish the Employer with a complete list of Stewards, which shall be supplemented from time to time as may be necessary.

SECTION 2. The Stewards or other individual employees covered hereby shall not be considered agents of the Union for the purpose of calling strikes or causing shutdowns or in any other way interfering with the normal operations of the store.

SECTION 3. On layoffs and transfers Stewards shall enjoy super-seniority. The Chief Steward in each store shall be the last employee to be transferred or laid off.

Article 9

Absenteeism, Tardiness, Company Rules

SECTION 1. The Union agrees to uphold the rules and regulations of the Employer in regard to punctual and steady attendance, proper and sufficient notification in case of necessary absence, and conduct on the job.

SECTION 2. The Union agrees to cooperate with the Employer in maintaining and improving safe working conditions and practices, in improving the cleanliness and good housekeeping of the stores and in caring for equipment.

SECTION 3. The Union agrees to cooperate in the correction of inefficiencies of members which might otherwise necessitate discharge.

SECTION 4. The Union and its members agree to make an earnest effort to recommend new employees to the Employer and to aid in decreasing labor turnover in the stores.

SECTION 5. The Union recognizes the need for conservation and the elimination of waste and agrees to cooperate with the Employer in suggesting and practicing methods in the interest of conservation and waste elimination.

Article 10—Effect of Invalidity

SECTION 1. The parties hereto agree that should any Article, part or paragraph of this Agreement be declared by a Federal or State Court of competent and final jurisdiction in the premises to be unlawful, invalid, ineffective or unenforceable, said Article, part or paragraph shall not effect the validity and enforceability of any other Article, part or paragraph hereof, and the remainder of this Agreement shall continue in full force and effect.

SECTION 2. The parties also agree to renegotiate any Article, part or paragraph of the Agreement that has been declared unlawful, invalid, ineffective or unenforceable as specified above.

Article 11—Vacations

SECTION 1. A vacation of one (1) week with pay, shall be granted to all regular full time employees with at least one (1) year, but less than two (2) years of continuous service on the job with Employer.

SECTION 2. A vacation of two (2) weeks with pay shall be granted to all regular full time employees with two (2) years or more of continuous service on the job with Employer.

SECTION 3. Beginning with the vacation period of April 1, 1961, a vacation of three (3) weeks, with pay, shall be granted to all regular full time employees with ten (10) years or more of continuous service on the job with Employer. Employees shall

take two weeks of the three weeks vacation during consecutive weeks. The third week need not be consecutive, but shall be scheduled by mutual agreement with the Employer.

SECTION 4. Vacation pay is to be based on the regular weekly hours multiplied by the straight time hourly rate for all regular full time employees.

SECTION 5. An employee shall become eligible for vacation following his anniversary date of employment and may receive his vacation at any time between April 1st and October 31st, but not later than his succeeding anniversary date of employment.

SECTION 6. In the event the services of an employee are terminated for any reason, voluntary or involuntary, except discharge because of dishonesty, after the vacation has been earned but before it has been received, there shall be paid to such employee salary covering the period of vacation to which he is entitled upon termination of services.

SECTION 7. Employees are entitled to receive their vacation pay at the beginning of their vacation period.

SECTION 8. Employees who, having qualified for a vacation, become disabled prior to having received their vacation, may upon request to the Company receive their vacation pay.

SECTION 9. Every reasonable effort shall be made to schedule vacation dates

in line with the employee's desire, but subject to the needs of the business. Employees shall be given the opportunity to choose vacation dates on the basis of their length of service.

SECTION 10. Employees entitled to vacation will not be allowed to take money instead of vacation.

SECTION 11. All time worked for Food Fair shall be credited for vacation benefits.

SECTION 12. If a holiday falls during an employer's vacation period, said employee shall receive one (1) extra day off with pay.

SECTION 13. An employee working for a competitor (grocery and/or meat) during his vacation period shall be considered to have voluntarily quit his employment with the Company.

Article 12—Holidays

SECTION 1. The following shall be recognized as holidays: New Year's Day, Labor Day, Christmas Day, Fourth of July, Thanksgiving Day and Memorial Day, or days legally celebrated in lieu thereof.

SECTION 2. A full time employee who works his scheduled day before and his scheduled day after one of the holidays listed above shall receive one-fifth (1/5) on one (1) week's pay at his straight time hourly rate.

SECTION 3. An absence due to proven illness on the employee's scheduled work-

day before or after the holiday shall not disqualify the employee for his holiday pay.

SECTION 4. An employee who works on any of the holidays listed above shall be paid one and one-half (1½) times his regular rate of pay for all hours worked on the holiday and, in addition, he shall receive the holiday pay provided for in paragraph two (2) above if he qualfiies for such holiday pay.

SECTION 5. The workweek during which any of the above specified holidays fall shall be four-fifths (4/5) of the established workweek for all regular full time employees covered by this Agreement.

SECTION 6. The holiday period shall be considered as starting at midnight and ending at midnight.

Article 13—Part-Time Benefits

SECTION 1. Part-time employees shall be offered the opportunity for full-time employment when an opening occurs in preference over new applicants.

SECTION 2. Regular part-time employees working thirty (30) hours or more per week consistently during the year, shall be considered as regular full-time employees for the purpose of vacations, holidays and welfare programs.

Article 14—Leave For Pregnancy

SECTION 1. A full-time female employee shall be considered to be unable to

perform her work after the fifth (5) month of pregnancy. If she has at least one (1) year of full-time continuous employment, she will be granted a leave of absence upon her written request accompanied with proper statement from attending physician. She shall return to work not later than the end of the fourth (4) month after the birth and if she does not return to work within the four (4) months after birth, she shall be considered to have voluntarily resigned as of the last day worked.

SECTION 2. In returning to work she shall be returned to the store from which she left provided her length of service is greater than employees in similar job classifications at work in the store.

SECTION 3. When returning from the leave, she must give the Personnel Office fifteen (15) days notice of her desire to return to work.

Article 15—Union Leave of Absence

SECTION 1. Any employee in the bargaining unit who is elected or appointed to a paid office in the Union, shall be granted a leave of absence, and upon the termination of said position in the Union shall be reinstated to his former position, plus such additional benefits that may be applicable in addition to his full seniority rights and privileges.

SECTION 2. The maximum period of absence permitted will be one (1) year subject to renewal and extension for ad-

ditional periods of only one (1) year, renewal periods may be extended only through the joint and mutual consent of both the Union and the Employer.

SECTION 3. The Union shall notify the Employer of any change in the employees status with the Union, and said employee must request reinstatement to his former position not later than fifteen (15) days after the Employer receives notification from the Union.

SECTION 4. The Employer agrees to permit no more than two (2) employees leave of absence without pay, in order to attend a Union coference or convention to which said employee may have been elected or appointed. The Union will notify the Employer the names of the delegates in advance in order that their jobs may be adequately covered during such leave of absence.

Article 16—Leave of Absence

SECTION 1. Any full-time employee with more than six (6) months of service desiring a leave of absence from the job because of illness or other legitimate reasons, must secure written permission from the Employer's Personnel Office, with a copy mailed to the Union.

SECTION 2. The length of absence is to be agreed upon by the Employer and the employee.

SECTION 3. Failure to return to work in accordance with the prearranged time

off shall result in the complete loss of seniority right to the employee so involved.

Article 17—Hours

SECTION 1. The maximum workweek for all employees covered by this Agreement, payable at straight time hourly rate shall not exceed:

Clerks:

45 hours to December 4, 1960
44 hours to December 3, 1961
42½ hours thereafter for duration of contract.

Department Managers:
and Front End Men:
49 hours to March 6, 1961
48 hours to December 3, 1961
47 hours thereafter for duration of contract

SECTION 2. The regular work day for male employees shall not exceed ten (10) hours; for females, nine (9) hours with the exception of Department Managers and Front End Managers noted in Article 43.

SECTION 3. All time worked in excess of the hours outlined above, shall be paid for at the rate of one and one-half (1½) times the employee's regular hourly rate.

SECTION 4. The five (5) day workweek does not have to be consecutive days.

SECTION 5. There shall be no pyramiding of overtime.

SECTION 6. There shall be no tolerance time. Employees will be paid for all time worked.

SECTION 7. The work week shall run Monday through Saturday inclusive.

SECTION 8. Any employees called in on Sundays and holidays shall be guaranteed five (5) hours work or pay in lieu thereof.

Article 18—Previous Benefits

No employee shall suffer a reduction in wages or an increase in hours or reduced vacation time or split shift by any provision of this Agreement or the signing thereof.

Article 19—Check-Off

SECTION 1. The Employer will deduct Union initiation fees and dues on the last Saturday of each month from the pay of employees who are members of the Union, and who individually and voluntarily certify in writing an authorization for such deductions in the amount certified by the Local Union to be due and owing. The Employer shall forward same to the Financial Secretary of the Local Union immediately following such deductions. The check-off authorization form to be used by the Union and recognized by the Company:

Check-Off Authorization Form

I, _____ hereby vol-
(Employee's Name)

untarily authorize _____
(Company's Name)

to deduct my initiation fee, and regular monthly dues as duly established from time to time by the Retail Clerks International Association, AFL-CIO, Local No. 1625, from my pay check on the first week of each month in advance, and deliver such initiation fee and dues to the aforementioned Local Union. This authorization shall continue to be in effect for the term of this contract between the Employer and the Unoin, or one year, from execution of check-off and shall automatically continue from year to year unless revoked in writing by the undersigned to the Employer, and the Union not more than fifteen (15) days nor less than ten (10) days prior to anniversary date of check-off authorization.

It is understood that the Employer's responsibility for the performance of this service is strictly limited to the delivery of such dues and initiation fees to the Retail Clerks Union, Local No. 1625.

Address

City

Telephone

Signed

Date

Store No.

Full-Time ( )

Part Time ( )

Section 2—Agency Shop Clause

"Employees shall have the right to voluntarily join or refrain from joining the Union. Employees who choose not to join the Union, however, and who are covered by the terms of this contract, shall be required to pay as a condition of employment, an initial service fee and monthly service fees to the Union for the purpose of aiding the Union in defraying costs in connection with its legal obligations and responsibilities as the exclusive bargaining agent of the employees in the appropriate bargaining unit. The aforesaid fees shall be payable on or before the first day of each month, and such sums shall in no case exceed the initiation fees and the membership dues paid by those who voluntarily choose to join the Union. Other than the payment of these service fees, those employees who do not choose to join the Union shall be under no further financial obligations or requirements of any kind to the Union." It shall also be a condition of employment that all employees covered by this Agreement shall on the 30th day following the beginning of such employment or the effective date of this agreement, whichever is later, pay established initial and monthly service fees as shown above.

Article 20—Health and Welfare

SECTION 1. The present Health and Welfare program consisting of Life Insurance, weekly Compensation Insurance and Family Hospital and Surgical Benefits shall

be incorporated into this Agreement and shall be continued for the duration thereof. As of September 1, 1960, the complete cost of the Health and Welfare Program shall be paid for by the Employer.

SECTION 2. All employees hired after the contract date and qualifying under ARTICLE 13, SECTION 2, shall three (3) months after date of employment qualify for the Health and Welfare Program.

SECTION 3. Employees injured on the job, and due to the injury cannot continue, shall receive full pay for said day. If a case is accepted as a compensation case, then the Employer will pay the weekly amount the employee receives under the Workmen's Compensation Law for the first week.

Article 21—Seniority

SECTION 1. Seniority shall appy to regular full-time employees working thirty (30) hours or more, and shall be determined by length of his latest continuous employment date without a break in service.

SECTION 2. In reduction of the work force seniority shall prevail, provided that employees retained shall be qualified or able to perform the work.

SECTION 3. In the case of recall after layoff, employees shall be recalled on the basis of seniority, provided they are qualified to perform the work for which there is a job opening.

SECTION 4. Seniority shall be considered lost:

(a) If an employee is laid off for a period exceeding three (3) months.

(b) If he fails to report for work for three (3) consecutive working days without notifying the Employer, unless it was impossible or unreasonable to do so.

(c) If he is duly discharged by the Employer.

(d) If he voluntarily quits.

(e) If he is recalled after layoff and fails to report for work within four (4) working days. Such call back and notification shall be by certified mail sent to the employee's last known address on file with the Employer. Copy of recall notice shall be mailed to the Union.

SECTION 5. New employees shall be employed on a trial basis for thirty (30) days. During the trial period, new employees may be discharged or laid off at the sole discretion of the Employer without recourse to the grievance procedure and without reference to seniority and without obligation to rehire such employee.

SECTION 6. The Employer shall prepare a seniority list showing names, classifications, rates and employment dates of all employees in the bargaining unit, the list to be made available to the Union at the signing of the Agreement, and the Em-

ployer shall furnish to the Union a weekly supplement list showing all deletions or additions to the seniority list.

Article 22—Sunday Work

SECTION 1. All Sunday work will be paid for at the rate of time and one-half (1½) the regular rate of pay, and there will be no reduction in the workweek of employees who perform Sunday work.

SECTION 2. There will be no discrimination against employees who refuse to work on Sundays and such Sunday work will be on a voluntary basis.

SECTION 3. It will be the policy of the Employer to distribute such Sunday work on an equitable basis consistent with the needs of management in the proper operation of the store.

Article 23—Work Schedules

SECTION 1. The hours of work for each employee shall be scheduled by the Employer.

SECTION 2. The Employer shall post a work schedule for all full-time employees not later than noon Saturday for the following week.

SECTION 3. A full-time employee scheduled to work on a particular day shall be guaranteed the scheduled hours for that day, provided he reports to work as scheduled.

SECTION 4. No employee shall be required to accept time off as compensation for overtime worked.

SECTION 5. Any employee called into work on his scheduled day off shall be paid at the rate of time and one-half (1½) except in cases of epidemics or storms.

Article 24—Guarantee Time

SECTION 1. Any employee except students reporting for work as requested at a time other than scheduled, shall be guaranteed four (4) hours work or four (4) hours pay in lieu thereof.

SECTION 2. School students, working AFTER school, shall be guaranteed two (2) hours work or two (2) hours pay in lieu thereof.

Article 25—No Split Shifts

No employee shall be required to work a split shift schedule.

Article 26—Rest Periods

The Employer agrees to grant all employees a fifteen (15) minute rest period for each four hours worked, not to exceed two (2) rest periods in any one day.

Article 27—Meal Periods

Each employee shall be allowed on his own time up to one (1) hour for lunch,

and one-half (½) hour or one (1) hour for supper, as scheduled by Employer.

Article 28—Transfers

SECTION 1. In the event of any temporary transfer of any employee from one store to another resulting in additional travelling fare over the regular fare paid by such employee, such employee shall continue to pay the regular fare and the Employer agrees to pay one additional fare up to a maximum of 50 cents per trip or $1.00 per round trip for any one day. All further addjtional fares to be paid for by the employee.

SECTION 2. No employee shall be required to take a transfer to a store outside the jurisdiction of the district manager's area. There shall be no unreasonable transfers.

Article 29—Tools

SECTION 1. All tools and equipment shall be furnished by the Employer.

Uniforms shall be furnished as provided by the Company heretofore.

Article 30—Union Store Card

SECTION 1. The Union agrees to furnish to the Employer at least one (1) union store card for each of the Employer's stores covered by this Agreement, to be displayed on such public portion of the premises as the Employer may select. Such

cards shall remain the property of and shall be surrendered to the Union upon demand.

Article 31—Voting Time

SECTION 1. During the General Elections (National and State) employees shall be granted reasonable time off, with pay, to vote, providing time off is necessary. Employees shall show proof of voting registration if required by Employer.

Article 32—Bulletin Boards

SECTION 1. The Employer will provide a bulletin board in each store. The Union may post notices necessary for conducting Union business with prior approval of the Employer.

Article 33—Jury Duty

SECTION 1. An employee who is called to jury duty shall receive the difference between jury duty pay and his base pay for those days on which he actually serves, providing he returns to his regular job on those days on which he does not serve.

Article 34—Funeral Leave With Pay

SECTION 1. In the case of the death of a parent, child, spouse, brother or sister, mother-in-law or father-in-law of a regular full-time employee requiring the absence of said employee from his regular scheduled assignment for the purpose of pre-

paring and/or attending the funeral, then such employee shall be granted a leave of absence of up to three (3) days.

SECTION 2. Where the employee's normal time off (vacation, holidays, designated day off, etc.) falls within the three (3) day period, he will not receive pay for three (3) days, but only for those days which are normally scheduled for work. Under no circumstances, however, shall the application of this clause result in a change in the employee's basic weekly salary.

Article 35—Separation Pay

SECTION 1. Any full-time employee separated from the Company for any reason other than proven dishonesty or quitting shall receive three (3) days notice or three (3) days pay in lieu thereof.

Article 36—Previous Experience

SECTION 1. New employees will be given credit for previous experience with other chains during the past five (5) years, when such experience is verified in writing. will be given this same consideration.

SECTION 2. Employees now working will be given this same consideration.

SECTION 3. Previous experience will be used only in determining the wage rate they will receive.

SECTION 4. Such previous experience shall be given only to those employees with

past experience with company's operating in the State of Florida that are covered wholly or partly under Retail Clerks Contract.

Article 37—Company Meetings

All employees required to attend Company called meetings shall be compensated at their straight time hourly rate.

Article 38—Strikes and Lockouts

SECTION 1. It is mutually agreed by the parties to this Agreement that there shall be no authorized strike or stoppage of work by the Union, nor shall there be any lockout by the Employer during the life of this Agreement, and that any difference or misunderstanding which may arise between the contracting parties shall be amicably adjusted by and between the parties themselves, and if any difference or misunderstanding cannot be amicably adjusted by and between the parties themselves then the matter shall be referred to a Board of Arbitration as provided for in ARTICLE 6 hereof.

SECTION 2. In the event of a threat of, preparation for, or the actuality of any unauthorized work stoppage, walkout or strike, the Union and all of its officials will take every reasonable action to prevent and to stop such proceedings by any of its members.

SECTION 3. In the event the Union should give official recognition to any picket line affecting the Employer, the Union will notify the Employer at least twenty-four (24) hours in advance of any participation by the Union.

Article 39—First Aid Kit

SECTION 1. The Employer shall install and keep supplied a first aid kit in each store, in such a place convenient and accessible to the employees in event of an accident or emergency which requires medical attention.

Article 40—Retroactivity

SECTION 1. Wage increases under this cnotract shall be retroactive to April 18, 1960.

Article 41—Merit Raises

No individual wage adjustment shall be made by the Employer except after consultation with, and consent of the Union, except as otherwise provided for in this Agreement.

Article 42—Military Leave

The law governing leave of absence for military service shall prevail, and failure to abide by such law shall also be considered as a violation of this Agreement.

Article 43

Wage and Hour Department Managers and Head Front End Men (Working 49 Hours)

Until March 6, 1961 ..... 49 hours—5 days
From March 6 of 1961 until December 3 of 1961 ..... 48 hourse—5 days
From December 3 of 1961 until expiration of contract ..... 47 hours—5 days

Work day for above named personnel shall consist of three (3) 9-hour days and two (2) 11-hour days, until March 6, 1961.

Thereafter, a new schedule will be agreed on at the time of each weekly hour change to conform with total weekly hours to be worked.

All Other Regular Full-Time Personnel

Until December 4, 1960 ..... 45 hours—5 days
From December 4 of 1960 until November 30 of 1961 ..... 44 hours—5 days
From December 3 of 1961 until expiration of contract ..... 42½ hours—5 days

Workday

Male	10 hours
Female	9 hours

Any time in excess of the above must be paid at the rate of time and one-half (1½) with exception of daily scheduled hours for Department Managers and Head Front Men as listed above.

Across The Board Increases

Male

DEPARTMENT MANAGERS AND HEAD FRONT END MEN (Working 49 hours per week):

$6.00 per week effective April 18, 1960
$5.00 per week effective April 17, 1961
$5.00 per week effective April 16, 1962

NOTE: The above increases are to be paid only those Male Department Managers and Head Front End Men who are on our Company's payrolls on July 11, 1960. Those Male Department Managers and Head Front End Men hired after July 11, 1960, do not receive the across-the-board increases as set forth as above.

ALL OTHER MALE EMPLOYEES:

For present full-time employees and Head Cashiers, Male and Female (working 45 hours per week):

$4.50 per week effective April 18, 1960
$3.50 per week effective April 17, 1961
$3.00 per week effective April 16, 1962

NOTE The preceding increases are to be paid only to those other male employees who are on the payroll as of July 11, 1960. Those male employees hired after July 11, 1960, do not receive the across-the-board increases set forth on page 18.

Across-The-Board Increases

Female

FOR PRESENT FULL TIME EMPLOYEES:

$4.00 per week effective April 18, 1960
$3.00 per week effective April 17, 1961
$3.00 per week effective April 16, 1962

NOTE: The above increases are to be paid only to those full-time female employees who are on the payroll as of July 11, 1960. Those full-time female employees hired after July 11, 1960, do not receive the across-the-board increases as set forth above.

Across-The-Board Increases

FOR PRESENT PART-TIME EMPLOYEES (working less than 30 hours per week): Male and Female (this does not include bag boys):

10¢ per hours effective April 18, 1960
10¢ per hour effective April 17, 1961
10¢ per hour effective April 16, 1962

NOTE: The above increases are to be paid only to those employees who are on the payroll as of July 11, 1960. Those part time employees hired after July 11, 1960, do not receive the across-the-board increases as set forth above.

BAG BOYS:

Across-the-Board increases for bag boys (full-time and part-time) in our employ July 11, 1960:

10¢ per hour effective April 18, 1960
10¢ per hour effective April 17, 1961
7½¢ per hour effective April 16, 1962

NOTE: The above increases are to be paid only to those full-time and part-time bag boys who are on our Company's payrolls on July 11, 1960. Those bag boys hired after July 11, 1960, do not receive the across-the-board increases as set forth above.

NOTE: Full-time and part-time bag boys are hired on an hourly basis not on a weekly basis.

NEW FULL-TIME PERSONNEL WAGE SCHEDULE. Effective from July 11, 1960 (this does not include bag boys): New hires do not receive the across-the-board increases as set forth in scheduled increases on pages 17 and 18.

Male

DEPARTMENT MANAGERS STARTING SALARY:

First 6 months of employment	$75.00 per week
Second 6 months of employment	$80.00 per week
Third 6 months of employment	$90.00 per week

NOTE: New hires do not receive the across-the-board increases as set forth in scheduled increases on pages 17 and 18.

ALL OTHER MALE EMPLOYEES:

First 6 months of employment	$50.00 per week
Second 6 months of employment	$55.00 per week
Third 6 months of employment	$58.00 per week
Thereafter for duration of contract	$60.00 per week

NOTE: New hires do not receive the across-the-board increases as set forth on pages 17 and 18.

PORTERS:

First 6 months of employment	$45.00 per week
Second 6 month of employment	$47.50 per week
Third 6 months of employment	$50.00 per week

NOTE: New hires do not receive the across-the-board increases as set forth on pages 17 and 18.

HEAD CASHIERS (Male or Female):

First 6 months of employment	$59.50 per week
Second 6 months of employment	$61.75 per week
Third 6 months of employment	$64.00 per week
Thereafter for duration of contract	$66.00 per week

NOTE: New hires do not receive the across-the-board increases as set forth on pages 17 and 18.

FEMALE CLERKS (Starting Salary):

First 6 months of employment	$45.00 per week
Second 6 months of employment	$47.50 per week
Third 6 months of employment	$50.00 per week
Thereafter for duration of contract	$53.50 per week

NOTE: New hires do not receive the across-the-board increases as set forth on pages 17 and 18.

PART-TIME MALE & FEMALE CLERKS

Part-time male and female clerks will be hired and paid on a pro-rata hourly basis:

MALE:	1960	$1.11 per hour
	1961	Pro-rated
	1962	Pro-rated
FEMALE:	1960	$1.00 per hour
	1961	Pro-rated
	1962	Pro-rated

In order for part-time clerks to receive their automatic increases referred to in schedule of increases, they must work the equivalent number of hours a full-time clerk works in six months.

For example:

First year contract— 26 x 45 hours	1,170 hours
Second year contract— 26x 44 hours	1,144 hours
Third year contract— 26 x 42½ hours	1,105 hours

WAGE SCALE FOR (FULL-TIME AND PART-TIME) BAG BOYS HIRED AFTER JULY 11th, 1960:

Starting Salary:

First 6 months of employment	70¢ per hour
Second 6 months of employment	80¢ per hour
Thereafter for duration of contract	85¢ per hour

NOTE: New bag boys who are hired after July 11, 1960 do not receive the across-the board increase as set forth on page 18.

Article 44—Cash Register Clause

Checkers, cashiers, handling cash, must have their own register till; no employee shall be responsible for shortgages in a cash drawer unless he or she has been given the privilege of counting his cash and has been given his register readings before and after the cash has been counted. Only one (1) employee shall be empowered to ring up on a cash drawer for which he or she is responsible.

Article 45—Expiration

This Agreement shall continue in effect from April 18, 1960 to April 15, 1963, and continue in effect from year to year thereafter unless either party notifies the other party sixty (60) days prior to expiration

date, or any anniversary date thereafter, of their desire to terminate or open the agreement for the purpose of amendments and/or changes.

In witness thereof the said parties execute this Agreement this 14th day of October, 1960.

FOR THE EMPLOYER:

J. S. SCHWARTZ
HAROLD FRIEDLAND
FRANK CATTERSON

FOR THE UNION:

PETER L. HALL
EMANUEL LOVENWORTH
FLORENCE WARNER
PEARL A. COUNTOIS
CHARLES W. BACHMAN
FRANK H. HARRISON
ROLAND G. CARROLL
LOUIS J. THOMAS
VERNON ADKINS
AL FAENZA
W. WILLIAM TRAVIS
FRED J. KHOURY
WM. M. KEMP
TOFICH HAKEEM

[fol. 15]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY

No. 60C 11562

ALBERTA SCHERMERHORN, LOIS DEVITA, JOYCE E. THURO, and LARRY STARK, individually, as well as in a representative capacity on behalf of each and all other persons of a multitudinous class to which they belong and which is similarly situated, Plaintiffs,

vs.

LOCAL 1625 OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO; WILLIAM TRAVIS, President of Local 1625 of the Retail Clerks International Association, AFL-CIO; and FOOD FAIR STORES, INC., SOUTHERN DIVISION, a Pennsylvania Corporation, registered to do business in the State of Florida, Defendants.

JUDGMENT FOR DEFENDANTS—December 23, 1960

This cause came on to be heard after due notice to the parties upon the plaintiffs' prayer for temporary injunction contained in the Complaint herein and upon Response to Application for Temporary Injunction, Motion to Dismiss and verified Answer of the defendants Local 1625 of the Retail Clerks International Association, AFL-CIO and William Travis, president thereof, at which hearing were present the plaintiffs, their counsel, the defendant Travis, representatives of the other defendants and their counsel, and witnesses for the parties, at which time the Court heard preliminary statements from counsel for the various parties as to the contentions and positions of the parties,

at which time counsel for defendant Food Fair moved ore tenus to adopt the defensive motions filed by the other defendants, which motion was granted by the Court, and, after reserving ruling on the defensive motions, heard testimony of the plaintiffs and their witnesses and received documentary evidence on behalf of the plaintiffs and defendants and the depositions of the individual plaintiffs [fol. 16] taken on behalf of the defendants, and heard argument of counsel, and the Court being otherwise fully advised in the premises, upon consideration thereof;

It is Ordered, Adjudged and Decreed as follows:

1. That the prayer for temporary injunction contained in the Complaint be and is hereby denied.

2. That the Motions to Dismiss of the defendants be and are hereby granted and the Complaint in this cause be and is hereby dismissed for the reason that the Court finds that the agency shop clause, Section 2, Article 19 of the contract between the defendant Union and defendant Food Fair is not violative of the Florida "right to work law" as contained in Section 12 of the Declaration of Rights of the Constitution of Florida and Chapter 447, Florida Statutes.

3. That judgment in favor of the defendants herein be and is hereby granted and the plaintiffs shall go hence without day.

Done and Ordered in Chambers, at Miami, Dade County, Florida, this 23 day of December, 1960.

Pat Cannon, Circuit Judge.

[fol. 18]

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT

IN AND FOR DADE COUNTY, FLORIDA

IN CHANCERY

No. 60C 11562

[Title omitted]

CROSS ASSIGNMENTS OF ERROR

Come now the defendants, Local 1625 of the Retail Clerks International Association, AFL-CIO, and William Travis, President of Local 1625 of the Retail Clerks International Association, AFL-CIO, by and through their undersigned counsel, and specify and assign as Cross Assignments of Error upon which they will rely in the District Court of Appeal, Third Appellate District of Florida:

1. The court erred in the entry of its judgment for defendants, dated December 23, 1960 and recorded December 27, 1960 in Chancery Order Book 1489, page 244, in failing to dismiss the complaint filed in this cause on the ground of lack of jurisdiction of the subject matter of the cause, for the reason that the Labor-Management Relations Act of 1947, as amended, has pre-empted the field of labor relations.

2. The court erred in the entry of its judgment for defendants, dated December 23, 1960 and recorded December 27, 1960 in Chancery Order Book 1489, page 244, in failing to dismiss the complaint filed in this cause on the ground of lack of jurisdiction of the subject matter of the cause, for the reason that the exclusive jurisdiction to determine whether or not the agency shop contract referred to in the complaint violates Section 12 of the Declaration of Rights of the Florida Constitution or Stat-
[fol. 19] utes of Florida lies with the National Labor Relations Board, since such a violation would constitute a

violation of the Labor-Management Relations Act of 1947, as amended.

Dated this 18th day of January, 1961.

Claude Pepper Law Offices, Attorneys for Local 1625, R.C.I.A., AFL-CIO, and William Travis, 1701 Meridian Avenue, Miami Beach 39, Florida, By Allen Clements, Jr.

Of Counsel: S. G. Lippman, Kaplan, Ser & Abrams.

Certificate of Service (omitted in printing).

[fol. 20]

IN THE DISTRICT COURT OF APPEAL OF FLORIDA

THIRD DISTRICT

JULY TERM, A.D. 1961

THURSDAY, SEPTEMBER 14, 1961

Case No. 61-7

ALBERTA SCHERMERHORN, LOIS DEVITA, JOYCE E. THURO, and LARRY STARK, Appellants,

vs.

LOCAL 1625 OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO; WILLIAM TRAVIS, President of Local 1625 of the Retail Clerks International Association, AFL-CIO; and FOOD FAIR STORES, INC., SOUTHERN DIVISION, a Pennsylvania corporation, authorized to do business in Florida, Appellees.

ORDER WITHDRAWING OPINION AND JUDGMENT AND TRANSFERRING CASE TO THE SUPREME COURT OF FLORIDA—September 14, 1961

Following the filing on August 31, 1961, of our opinion and judgment but before issuance of our mandate, appellees

moved this court to withdraw its opinion and transfer the cause to the Supreme Court, asserting the appeal should have been made to the latter court because, they contend, the decision of the trial court was one "construing a controlling provision of the Florida constitution" (Art. V, § 4(2), Fla. Const., 26 F.S.A.) and therefore excluded from our jurisdiction as prescribed in Art. V, § 5(3), ibid.

On consideration of said motion and on authority of the recent Supreme Court decision in Robinson v. State, filed July 14, 1961, —— So. 2d ——, and in order that the question as to jurisdiction over this appeal may be determined by the court of paramount jurisdiction, we make this transfer of the cause to the Supreme Court under rule 2.1(5)(d), F.A.R.; and to effectuate this order our mandate is stayed, and if the Supreme Court takes jurisdiction of the appeal our opinion and judgment filed herein on August 31, 1961, shall stand vacated without further order, but if the Supreme Court concludes it does not have jurisdiction of the appeal then our said opinion and judgment will remain in force and our mandate will be directed to issue thereon.

Accordingly, and on the basis outlined hereinabove, it is ordered that the notice of appeal together with all papers filed prior to September 21, 1961, shall on that date be transferred to the Supreme Court of Florida as the proper court having jurisdiction in this cause.

A True Copy

Attest:

[Signature Illegible] Clerk, District Court of Appeal, Third Division.

[fol. 21]

Not Final Until Time Expires to File Rehearing Petition and, If Filed, Determined.

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1962

Case No. 31,465

ALBERTA SCHERMERHORN, LOIS DEVITA, JOYCE E. THURO, and LARRY STARK, Appellants,

vs.

LOCAL 1625 OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO; WILLIAM TRAVIS, President of Local 1625 of the Retail Clerks International Association, AFL-CIO; and FOOD FAIR STORES, INC., SOUTHERN DIVISION, a Pennsylvania corporation, authorized to do business in Florida, Appellees.

OPINION—Filed April 25, 1962

An Appeal from the Circuit Court for Dade County, Pat Cannon, Judge.

Bernard B. Weksler, for Appellants.

Claude Pepper Law Offices, S. G. Lippman (Washington, D. C.), Tim L. Bornstein (Washington, D. C.), and Kaplan, Ser & Abrams, for Local 1625 of the Retail Clerks International Association, AFL-CIO, et al. and Aronovitz, Aronovitz & Haverfield and Robert M. Haverfield for Food Fair Stores, Inc., Southern Division, Appellees.

Bolles & Prunty for John Hancock Mutual Life Insurance Company; Allen Clements, J. Albert Woll (Washington, D. C.) and Theodore J. St. Antoine (Washington, D. C.) for American Federation of Labor and Congress of Industrial Organizations and Florida State Federated Labor Council; John L. Kilcullen (Washington, D. C.) and T. David Burns, for Florida Right to Work Committee, Amicus Curiae.

HOBSON, J.

The appellants, plaintiffs in the action below, sought by an action in equity to enjoin the appellee labor union and Food Fair Stores from enforcing the provisions of an "Agency Shop" clause contained in a collective bargaining contract between the union and Food Fair. The contract provision under attack provides that employees who are not union members "shall be required to pay as a condition of employment, an initiation service fee and monthly service fees to the union," such amounts being equal to the initiation fees and monthly dues for union members. The appellants are non-union employees of Food Fair. It is [fol. 22] their contention that the agency shop provision of the contract violates the "right to work" provision of the Declaration of Rights of the Florida Constitution, Section 12.

A motion to dismiss the complaint was filed on the grounds, first, that the matter was one within the exclusive jurisdiction of the National Labor Relations Board by virtue of the provisions of 29 U.S.C.A. §§141-188, and also that the contract provision does not violate Section 12 of the Declaration of Rights.

The trial court granted the motion to dismiss and entered a final order wherein it was stated in part:

> "... the Complaint ... is hereby dismissed for the reason that the court finds that the agency shop clause, Section 2, Article 19 of the contract between the defendant Union and defendant Food Fair is not violative of the Florida 'right to work law' as contained in Section 12 of the Declaration of Rights of the Constitution of Florida ..."

The cause was appealed to the District Court of Appeal, Third District. The District Court heard arguments and filed an opinion in which the decree of the chancellor was reversed and the cause remanded. Before that decision became final the appellees filed a motion to the court to withdraw its opinion and transfer the appeal to this court, asserting that the appeal should have been made directly

to this court because the decision was one "construing a controlling provision of the Florida Constitution." Article V, Section 4, Florida Constitution. The District Court granted the motion and transferred the cause to this court, and entered an order withdrawing its opinion, conditioned upon this court's accepting jurisdiction. The initial question with which we are faced is whether we have jurisdiction to determine this cause on a direct appeal.

In our judgment, the chancellor's order quoted above clearly and unquestionably *construes* Section 12, Decla- [fol. 23] ration of Rights. Unlike in Milligan v. Wilson, Fla., 104 So. 2d 35, and Carmazi v. Board of County Commissioners, Fla., 104 So. 2d 727, the issues in the instant case *required* the trial court to rule directly on a constitutional provision. Moreover, the fact that there was such a direct ruling appears from the face of the lower court's order. The question is whether the *ruling* amounts to a *construction* of Section 12, Declaration of Rights. As stated in Armstrong v. City of Tampa, Fla., 106 So. 2d 407, and in Cohen v. State, Fla., 121 So. 2d 155, the trial court will be held to have construed a controlling provision of the constitution if the court undertakes to "eliminate existing doubts arising from the terms of the constitutional provision." In the instant case, there were "existing doubts," inasmuch as it has never before been determined by an appellate court in this State whether an agency shop clause contravenes the "right to work" amendment of our Constitution. The trial court undertook to eliminate these doubts by *squarely* holding that the contract clause was valid.

The Chancellor did not merely apply the facts "to a recognized clear-cut provision of the Constitution," as in Page v. State, Fla., 113 So. 2d 557, because the right to work clause is not "clear-cut" when considered in connection with the facts presented in the instant case. On the contrary, the trial court was confronted with, and decided, a legitimate constitutional question of first impression.

In Boyd v. Dade County, Fla., 123 So. 2d 323, we recognized that it was the plain constitutional plan of Article V, Section 4, "that judgments construing controlling provisions

of the Florida Constitution, *being of such great importance to all the people,* should be decided by direct appeals to the one court beyond which there can be no further appeal." (Emphasis supplied.) Certainly, the constitutional question decided in the instant case is of no *less* importance to the general public merely because the chancellor did not see fit to launch into an extended dissertation giving his [fol. 24] reasons for construing the constitutional provision as he did. Moreover, since the order *on its face* shows that the constitution was construed, this is not a case where it is necessary that we return the cause to the chancellor for a determination as to the basis of his ruling.

In the case of Boyd v. County of Dade, Fla., 123 So. 2d 323, we held that we had jurisdiction on direct appeal because the trial court had construed a controlling provision of the Florida Constitution in its order denying a motion for a jury trial in the Metropolitan Court of Dade County. The pertinent portion of the trial court's order was as follows:

> "'* * * after hearing argument of counsel and carefully considering each of the constitutional rights raised by the defendant for trial by jury and being otherwise fully advised in the premises, finds that the grounds given by the defendant in his request for a jury trial are not applicable to this Court. * * *.'"

Since, by virtue of the above quoted order, it was held that this court had jurisdiction on direct appeal, it is equally clear in the instant case that the trial court construed a controlling provision of the Florida Constitution within the meaning of Article V, Section 4, and that we therefore possess jurisdiction to determine this cause on direct appeal.

Upon full consideration of the arguments and briefs of the parties, as well as the briefs of the various amici curiae, we are of the opinion that the judgment of the trial court must be reversed for the reasons set forth herein and in the excellent and learned opinion prepared for the District Court of Appeal, Third District, by Judge Carroll, which is hereinafter set out *in haec verba.*

The portion of Section 12 of the Declaration of Rights which is in issue, reads as follows:

> [fol. 25] "The right of persons to work shall not be denied or abridged on account of membership or non-membership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

This section clearly bestows on the workingman a right to join or not to join a labor union, as he sees fit, without jeopardizing his job. Inasmuch as the Constitution has granted this right, the agency shop clause is repugnant to the Constitution in that it requires the non-union employee to purchase from the labor union a right which the Constitution has given him. The Constitution grants a free choice in the matter of belonging to a labor union. The agency shop clause contained in the contract under consideration purports to acknowledge that right, but in fact, abrogates it by requiring the non-union worker to pay the union for the exercise of that right or, in the alternative, to be discharged from his employment. Such an arrangement is palpably and totally inconsistent with the freedom of choice contemplated by our Declaration of Rights, Section 12.

The appellees contend that, except for the "agency-shop" provision, the non-union employees of the appellant Food Fair would be "free riders," that is, they would reap the benefits of union representation without having to bear any of the cost thereof. This argument is grounded on the fact that the union is, by law, the bargaining agent for all employees—those who do not belong to the union as well as those who do. 29 U.S.C.A. §159. This argument may be answered by reference to the section of the Constitution under consideration. Clearly, it is the intent of this section to leave as a matter for *individual determination and preference* the question of whether the worker will [fol. 26] derive any benefit from association with a labor union. The choice is his to make. Presumably, the appel-

lants in the instant case have decided that union membership is not an overall benefit to them personally, else they would have joined.

The appellees further assert that our state courts are without jurisdiction to determine this matter, because of the pre-emption by the federal government of the field of labor relations, by virtue of the Labor Management Relations Act, 29 U.S.C.A. §§ 141-188. We hold, as did the Supreme Court of Kansas in the case of Higgins v. Cardinal Manufacturing Company, 188 Kan. 11, 360 P. 2d 456, that Section 14(b) of the Taft-Hartley Act [29 USCA §164(b)] preserves the jurisdiction of the states in matters involving state "right-to-work" provisions. It is true that Section 14 (b) specifically deals only with "agreements requiring *membership* in a labor organization as a consideration of employment . . ." However, it is not to be presumed that Congress would preserve to the states the field of right-to-work legislation, while, at the same time, intending that unions and management could, by the use of subterfuge of an agency shop clause, circumvent and, in effect, nullify a paramount provision of the organic law of any of the several states.

A recent decision of the Federal District Court of Nevada, as yet unreported, squarely supports our holding herein regarding the power of the states under Section 14(b) to prohibit the enforcement of agency shop agreements. In that case, the court held that although the literal language of Section 14(b) only reserves to the states the right to prohibit agreements making union *membership* compulsory, it would frustrate the congressional intent to construe that section so as to prevent the states from also prohibiting agency shop agreements. In its opinion, the District Court stated:

> [fol. 27] "Section 14(b) would be bereft of meaning if we were to construe it in a fashion which would render the states powerless to make illegal that type of union security agreement which imposes liabilities on the working man which, realistically, are the same liabilities, which under the section, the states may remove." Amalgamated Association of Street, Electric

Railway and Motor Coach Employees, Division 1225 v. Las Vegas-Tonopah-Reno Stage Line, Inc., U.S.D.C. Nev., January 12, 1962; 30 U.S. L. Week 2392.

Having thus expressed the opinion of this court on the question of its jurisdiction as well as the chief issues involved in this case, we hereby approve and adopt as our own the following unpublished opinion by the District Court of Appeal, Third District, prepared by Carroll, J.:

"The appellants, who were plaintiffs below, filed suit in equity for themselves and for all others similarly situated, against Food Fair Stores, Inc., Southern Division, a Pennsylvania corporation doing business in Florida, and the [fol. 28] appellee labor union and its president, to enjoin the application to plaintiffs and other non-union employees of an 'agency shop contract' between the employer and the union.[1] The contract provided that employees who were not members of the union 'shall be required to pay as a condition of employment, an initiation service fee and monthly service fees to the union,' being the amounts union members pay for initiation and for monthly dues.

"The complaint charged the contract violated the right to work provisions of the Florida Constitution[2] and statutes.[3] The trial court rejected that contention and rendered judgment for defendants, holding that the agency shop contract was not in violation of the Florida right to work law, and the plaintiffs appealed.

"[1] Through representing the majority, the union had gained the right under the law to act as bargaining agent for all of the employees. §8 (a) (5), National Labor Relations Act, 29 U.S.C.A. §158 (a) (5); §9 (a), 29 U.S.C.A. 159 (a)."

"[2] '* * * The right of persons to work shall not be denied or abridged on accoun. .f membership or non-membership in any labor union, or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer. * * *' Fla. Const., Declaration of Rights, § 12, 25 F.S.A."

"[3] §§ 447.01 and 447.09, Fla. Stat., F.S.A."

"In a motion to dismiss in the trial court and again here the defendants-appellees contended that the controversy is one within the jurisdiction of the National Labor Relations [fol. 29] Board,[4] under § 8 of the Act (29 U.S.C.A. § 158), and that as a consequence we are required to yield jurisdiction to the Board.[5]

"This question as to jurisdiction has been decided contrary to that contention in three recent cases of this kind in appellate courts in Arizona, Indiana and Kansas.[6] We hold, as was held in those cases, that the Algoma case[7] of 1949 which sanctioned state regulation of union security agreements impinging on state right to work laws has not been overruled in that respect by the subsequent decisions of the United States Supreme Court dealing with this question of pre-emption. Not only has Algoma not been expressly overruled, but it has repeatedly been recognized and cited with apparent approval in later United States

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"[4] Essential to that contention was that the business involved be one engaged in interstate commerce. The record shows no allegation or reference to the subject matter being within the flow of interstate commerce. But we proceed on the assumption that it is, since the parties so treated it in argument. See Wood, Wire & Metal Lathers International Union v. Babcock Co., decided July 31, 1961, —— So. 2d ——."

"[5] This court has repeatedly recognized the doctrine of federal pre-emption and ceded jurisdiction to the Board in cases where it was shown to be required. See Amalgamated Clothing Workers, etc. v. Donald S. La Vigne, Inc., Fla.App.1958, 111 So.2d 462; International Ladies Garment W.U. v. Sherry Mfg. Co., Fla.App. 1959, 115 So.2d 27; International Hod Carriers, etc. v. Heftler Const. Co., Fla.App.1959, 116 So.2d 30; North Dade Plumbing, Inc. v. Bowen, Fla.App.1960, 116 So.2d 790; I.B. of E. W. Local 349 v. Shires, Fla.App.1960, 123 So.2d 259; Casteel v. United Brotherhood of Carpenters & Join., Fla.App.1960, 125 So.2d 123; Wood, Wire & Metal Lathers International Union v. Babcock Co., supra."

"[6] Sheet Metal Workers International Ass'n. v. Nichols, (1961), 89 Ariz. 187, 316 P.2d 204; Meade Electric Company v. Hagberg, (1959), 129 Ind.App.631, 159 N.E.2d 408; Higgins v. Cardinal Manufacturing Company, (1961), 188 Kan. 11, 360 P.2d 456."

"[7] Algoma P. & V. Co. v. Wisconsin Emp.Rel.Bd., 336 U.S. 301, 69 S.Ct. 584, 93 L.Ed. 691."

Supreme Court cases. See Colgate-Palmolive-Peet Co. v. N.L.R.B., 338 U.S. 355, 70 S.Ct. 166, 94 L.Ed. 161, 168; Garner v. Teamsters C. & H. Union, 346 U.S. 485, 74 S.Ct. [fol. 30] 161, 98 L.Ed. 228, 238; Weber v. Anheuser-Busch, 348 U.S. 468, 75 S.Ct. 480, 99 L. Ed. 546, 556; Guss v. Utah L.R.B., 353 U.S. 1, 77 S.Ct. 598, 1 L.Ed. 2d 601, 607; Local 24 of I.B. of T.C.W. v. Oliver, 358 U.S. 283, 79 S. Ct. 297, 3 L.Ed. 2d 312, 321; San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236, 79 S.Ct. 773, 3 L.Ed. 2d 785, 788 (concurring opinion). As late as 1959, in the Oliver case, in footnote 10, it was said (358 U.S. at 296):

> 'In Algoma, state law was allowed to operate to restrict a provision of a collective bargaining contract only after it was found after an exhaustive examination of the legislative history of the Wagner Act that Congress intended to leave the special subject of the legality of maintenance of membership clauses up to the States through § 8(3) of that Act, 49 Stat. 452. Questions of the nature that we consider today were expressly left open. 336 US at 312.'

"This exception from the federal pre-emption doctrine seems an obvious one brought about by § 14(b) of the Federal Act,[8] which specifically authorizes and recognizes the validity of right to work laws of the several states. We agree with the statement of the Kansas Supreme Court on this point, where it was said:

> 'There would be little point in permitting the states to enact such [right to work] laws if they could not be enforced by the states.[9]'

"[8] 'Nothing in this subchapter shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.'. 29 U.S.C.A. § 164(b)."

"[9] In support of the argument for pre-emption appellees referred to a recent instance in which the National Labor Relations Board took jurisdiction of a matter which was claimed to have dealt with the question of an agency shop contract vis-a-vis a state right to

[fol. 31] "The chancellor was eminently correct in assuming jurisdiction and in not ceding it to the Board in this instance. But we hold that the chancellor was in error in ruling that this agency shop contract does not violate the Florida right to work law.

"Appellants contend the agency shop contract denies or abridges their right to work in violation of the Florida right to work law, by exacting tribute from them because of their non-membership in the union as a condition of their employment or continued employment.

"Appellees argue that because the union has gained the right to act as bargaining agent for all of the employees it is only fair that the non-member sector of the employees should have to pay money to the union as a condition of their right to work, to help the union defray the cost of such bargaining.

[fol. 32] "Regarding the intent and policy of this state's right to work law, the Supreme Court of Florida in Local Union No. 519 v. Robertson, Fla.1952, 44 So.2d 899, 902, said:

> 'By these provisions of the Constitution and the statutes the public policy of the State of Florida with respect to labor activities and labor opportunities has been set forth and defined. Under these provisions it

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work law. The ruling involved (130 N.L.R.B. No. 54), which concerned General Motors Corporation, was made in February of 1961, and is found in 4 C.C.H. Law Rep., N.L.R.B. decision §9663, p. 14,978. Examination of that ruling shows the question before the Board was not whether the *making and application* of an agency shop contract was violative of a state right to work law (which question, as recognized in the Algoma case is reserved to the state for determination), but the question before the Board was whether, in a state having a right to work law, refusal of an employer to bargain with a union with respect to inclusion of an agency shop clause in a bargaining contract was an unfair labor practice. Interestingly, the Board upheld the employer's refusal to bargain under those circumstances. Appellees strongly urged that such ruling of the Board constituted evidence and precedent for preempting jurisdiction of the matter involved here, but from the nature of the question which was before the Board, as we have pointed out, the action of the Board in that instance could not be given the effect which the appellees assigned to it."

is the declared public policy of the State that all working men, whether union or non-union, shall be considered on an equal footing with respect to labor opportunities. They are guaranteed complete freedom of decision in whether to join or refrain from joining any labor organization. *No person or organization may deny them the right of obtaining or retaining employment, nor may the right be abridged, by reason of membership or non-membership in any labor organization.* They are not to be coerced or intimidated in the enjoyment of their legal rights, including the right of free decision as to whether or not they will join a union, and any person or labor organization who so coerces or intimidates them is to be deemed guilty of a crime punishable by fine or imprisonment, or both.' [Italics supplied.]

"Under § 12 of the Declaration of Rights of Florida what is prohibited is the denial or *abridgement* of one's right to work 'on account of membership or non-membership in any labor union, or labor organization.' When, because of his non-membership, an employee is required to pay labor union dues, or sums equal to the dues, as a condition of employment or continued employment, his right to work is 'abridged.'

"Anything which imposes a charge or expense upon the free exercise of a right, abridges it in the sense of curtailing or lessening the use or enjoyment of that right. As defined in Webster's New International Dictionary, to abridge is 'to deprive; to cut off; to diminish, curtail.' [fol. 33] And 'abridge' is defined in The Oxford English Dictionary as being 'to curtail, to lessen, to diminish (rights, privileges, advantages, or authority.)' The Louisiana Supreme Court adopted this meaning and definition of *abridged* as contained in the right to work law of that state,[10] saying:

'The public policy of Louisiana is expressed in the Right to Work Act, Section 1, supra. In analyzing

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"[10] Piegts v. Amalgamated Meat Cutters, etc., 228 La. 131, 81 So.2d 835, 838."

"the right of a person or persons to work shall not be denied or *abridged* on account of membership or non-membership in any labor union or labor organization", we must look to the meaning of the word "abridged". A study of various law dictionaries and Webster's Dictionary will show that the Legislature intended the word "abridged", as used in the Act, to mean "diminished, reduced, curtailed, or shortened".'

"The natural and reasonable interpretation of the Florida constitutional amendment, which prohibits compulsory membership in a labor organization as a condition of employment or of continued employment, is that it necessarily forbids forcing a non-member employee to pay union initiation fees, dues and assessments or equivalent amounts as a condition of employment or of continued employment. A contrary construction of the right to work law would leave it little or no useful purpose to serve.[11]

"For the reasons stated, we are impelled to hold that the 'agency shop' provision in the contract here under attack [fol. 34] violates § 12 of the Declaration of Rights of Florida, which declares the right to work policy of this state. Accordingly, the decree is reversed and the cause remanded for further proceeding not inconsistent herewith.

"Reversed and remanded."

Regarding Footnote 9 of the foregoing opinion, it should be pointed out that the NLRB has since receded from its opinion in the General Motors Corporation case, 130 N.L.R.B. No. 54. See 133 N.L.R.B. No. 21. Likewise, it should be noted that on December 15, 1961, the Supreme Court of the United States denied a petition for certiorari in the case of Higgins v. Cardinal Manufacturing Company, supra, Footnote 6.

"[11] *Accord*, Sheet Metal Workers International Ass'n. v. Nichols, supra, 89 Ariz. 187, 316 P.2d 204; Higgins v. Cardinal Manufacturing Company, supra, 188 Kan. 11, 360 P.2d 456. *Contra*, Meade Electric Company v. Hagberg, supra, 129 Ind.App. 631, 159 N.E.2d 408."

For the reasons stated in our own opinion, and in the opinion adopted by us, the decree is reversed and the cause remanded for further proceedings not inconsistent herewith.

It is so ordered.

Roberts, C.J., Drew and Thornal, JJ., and Parks, Circuit Judge, concur.

Thomas, J., dissents because of lack of jurisdiction.

O'Connell, J., dissents as to jurisdiction, concurs as to merits.

O'CONNELL, J., Dissenting.

I must dissent because I am of the opinion that this court does not have jurisdiction to decide this case. However, I fully agree with the opinion on the merits of this cause.

[fol. 37]

MANDATE FROM SUPREME COURT OF FLORIDA

To the Honorable, the Judges of the Circuit Court for the Eleventh Judicial Circuit of Florida. Greeting:

Whereas, Lately in the Circuit Court of the Eleventh Judicial Circuit, in and for the County of Dade in a cause wherein

ALBERTA SCHERMERHORN, LOIS DEVITA, JOYCE E. THUBO, and LARY STARK, individually, as well as in a representative capacity on behalf of each a d all other persons of a multidudinous class to which they belong and which is similarly situaties, were

plaintiffs

(CIRCUIT COURT No. 60C 11562 — IN CHANCERY)

and

and

defendants

LOCAL 1625 OF THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO; WILLIAM TRAVIS, President of Local

1625 of the Retail Clerks International Association, AFL-CIO; and Food Fair Stores, Inc., Southern Division, a Pennsylvania corporation, registered to do business in the State of Florida, were

the Decree of said Circuit Court was rendered Dec. 23, 1960 as by the inspection of the transcript of the record of the said Circuit Court which was brought into the Supreme Court of the State of Florida, by virtue of an appeal agreeably to the laws of said State in such case made and provided, fully and at large appears:

And Whereas, at the January Term of said Supreme Court holden at Tallahassee, A. D. 1962, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel; in consideration whereof, on the 25th day April A. D. 1962 the said Supreme Court rendered its opinion and judgment in said cause as per copy thereof hereto attached and made a part hereof.

In Consideration Whereof, It Is Ordered by the Court that the Appellant do have and recover of and from the Appellees costs in this behalf expended herein taxed at Twenty-Five Dollars, and that all other costs shall be taxed in the court in which the appeal was entered, therefore,

You Are Hereby Commanded, That such further proceedings be had in said cause as according to right, justice, the judgment of said Supreme Court, and the laws of the State of Florida, ought to be had, the said Decree of the Circuit Court notwithstanding.

Witness, The Honorable B. K. Roberts

Chief Justice of said Supreme Court, and the seal of said Court at Tallahassee, this

14th day of May 1962

/s/ Guyte P. McCord
Clerk Supreme Court of Florida.

[fol. 38] Clerk's Certificate (omitted in printing).

[fol. 39]

SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 24, 1962.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 19th day of July, 1962.

[fol. 40]

SUPREME COURT OF THE UNITED STATES

No. 368, October Term, 1962

RETAIL CLERKS INTERNATIONAL ASSOCIATION, LOCAL 1625, AFL-CIO, ET AL., Petitioners,

vs.

ALBERTA SCHERMERHORN, ET AL.

ORDER ALLOWING CERTIORARI—November 19, 1962

The petition herein for a writ of certiorari to the Supreme Court of the State of Florida is granted. The case is transferred to the summary calendar and set for argument immediately following No. 404.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.